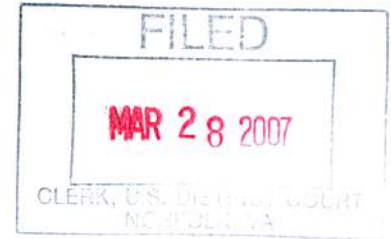


UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NORFOLK DIVISION



JTH TAX, INC. d/b/a LIBERTY TAX
SERVICE,

Plaintiff,

Civil No. 2:07 cv 154

v.

NIEN VAN,

Defendant.

Declaration of Jerry Bayless

Pursuant to 28 U.S.C. § 1746, I, Jerry Bayless, having personal knowledge of the facts herein state under oath as follows:

1. I am an Area Developer for JTH Tax, Inc. d/b/a Liberty Tax Service ["Liberty"] and have been since June 2005. The area in which I serve as an Area Developer includes the Rockport and Aransas Pass areas of Texas where Nien Van ["Van"] operated.

2. In January 2003, Van commenced operation of a Liberty Tax office within the territory TX272 at 235 South Commercial Street, Aransas Pass, Texas 78336.

3. In mid 2005, I discussed additional franchise opportunities with Van. In particular, I encouraged Van to expand to a neighboring territory and purchase the Liberty territory known as TX273 which encompassed Rockport, Texas.

4. Van declined to purchase the territory stating that the territory was too expensive and that the Rockport, Texas did not have the necessary clientele to make a tax preparation office successful.

5. No further discussion ever arose about the purchase of TX273.

6. On or about March 2, 2007, I received an anonymous fax from a customer notifying me that Van was operating an unapproved Liberty office in Rockport, Texas which was located in the Liberty territory for which Van previously declined to purchase. Ex. 1.

7. In this anonymous fax, the customer was expressing irritation in that the customer had gone to the Liberty office in Aransas Pass, Texas yet for some reason the customer's tax return information was sent through a Rockport office to be prepared. The customer further explained that a different bank was used in Rockport, that the paperwork returned to the customer was marked "American Tax" and that the customer's Refund Anticipation Loan took two weeks.

8. As a result of discovering that Van was likely operating an unapproved tax preparation business in a territory for which she did not own, I called Information (411) and requested the phone number for American Tax in Rockport, Texas. I was told that although they could not locate any business under the name American Tax, they did have a business named Liberty Tax.

9. After receiving the phone number for this Liberty Tax located in Rockport, Texas, I called this non-Liberty office and inquired if they were affiliated with Liberty Tax Service. The person who answered the phone stated that the business was formerly Liberty.

10. I proceeded to ask to be connected with Van. I was told that although she was not there at that moment, Van would be arriving later that day and that I could leave a message.

11. On or about March 7, 2007, I received a text message on my cell phone asking me to return a phone call to 361-230-0226. I returned the call and spoke with Janet Pena.

12. Ms. Pena, nervously and anxiously, indicated that she had met me at a Liberty training session in December 2005 as she had accompanied Van to this Liberty training. I then recalled meeting Ms. Pena at this Liberty training.

13. Ms. Pena proceeded to ask me “what was going on” explaining that “Nien was acting very funny and was having us box up everything at the Rockport office.”

14. I continued to question Ms. Pena and learned the following:

- Ms. Pena said she worked for Van at both the Rockport and Aransas Pass locations for the last three seasons and that she primarily manages the Rockport office.
- Ms. Pena stated that the Rockport location had commenced operation under the name “Liberty Business Services,” but had recently changed its name to “American Tax Services.”
- Ms. Pena said that Van commanded that she box all of the papers and other items at the Rockport office up but never gave any indication as to why she was requesting that the office be rid of all tax files and other tax office belongings.

15. On or about March 9, 2007 I received a call from Van asking “what was going on.” She wanted to know why an investigator was investigating her and why we were talking to her employees.

16. She then asked why I had called her Rockport office. I explained that I received an anonymous fax informing me that the tax return that a customer had prepared at the Liberty office in Aransas Pass was completed at a non-Liberty office in Rockport. I also explained how I called information and was given the phone number for a Liberty office in Rockport. Van responded that the telephone company had likely made a mistake about listing this non-Liberty office under Liberty’s name.

17. Van then proceeded to tell me the following:

- She and her sister own the office in Rockport, Texas.

- They have had this office for five years.
- The Rockport office is primarily engaged in book keeping
- The Rockport office also prepares taxes.

18. I questioned Van as to how many tax returns the Rockport office had prepared. Van stated that the Rockport office had prepared approximately 50-55 returns this calendar year.

19. When Van probed as to why Liberty might be investigating her Rockport office, I explained that it might be because Liberty feels that some impropriety had been committed by Van's operation of this non-Liberty office.

20. Van immediately admitted sending tax returns from customers who went to the Liberty office in Aransas Pass to the non-Liberty office in Rockport. Van further explained that the only reason she transferred some returns from Aransas Pass to Rockport was because SBBT (the service bank for Liberty in the Aransas Pass area) would not approve a Refund Anticipation Loan for a customer that had a Schedule C tax document and that HSBC (the service bank for Van's non-Liberty office in Rockport) would accept such a return.

21. On March 14, 2007 I visited Van's Liberty office in Aransas Pass, Texas. Van was at the office at the time I visited.

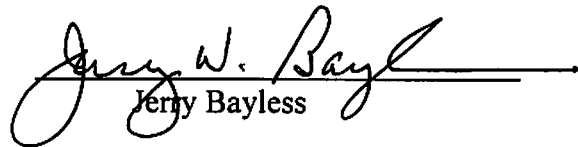
22. I questioned Van as to how many returns Van shifted from the Liberty office to her office in Rockport. Van answered that she had shifted only 7 or 8 returns from Liberty to a non-Liberty office. She also gave me a list of the names and social security numbers of the returns of customers who went to the Liberty office for tax preparation services yet had their taxes prepared at this non-Liberty office in Rockport. Attached hereto as Exhibit 2 is a true and correct copy of this list with last names and social security numbers redacted.

23. At the time of my visit to the Liberty office, I also printed a complete client list of the names and social security numbers of all customers who had gone to the Liberty office for tax preparation services.

24. Van told me on this day that the Rockport business is her cousin's despite the fact that she previously admitted ownership.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 26 day of March 2007.


Jerry Bayless

ATTN: MR BRAYLESS

1-866-629-0193

MR JERRY BARELESS:

03/02/2007

I THOUGHT THAT LIBERTY TAX WAS A
FRANCISE. IF IT IS, WHY DOES THE
VIETNAMESE LADY FROM ARANSAS PASS
LIBERTY STORE HAVE ANOTHER ONE IN
ROCKPORT AT 405 N CHURCH?
I THOUGHT I WAS DOING MY PAPERWORK IN
ARANSAS PASS BUT THEY SENT IT TO
ROCKPORT TO BE DONE OVER THERE. I
DID'NT GET MY RAL BECAUSE OF A
DIFFERENT BANK BEING USED IN
ROCKPORT. I USED SANTA BARBARA
BEFORE AND ROCKPORT USES HSBC. MY
PAPERWORK HAD AMERICAN TAX SERVICE
PRINTED ON MY COVER TO MY PAPERWORK.
THE LADY IN ROCKPORT WAS VERY NICE
TOO BUT THEY SHOULD HAVE LET ME
KNOW BEFORE THEY SENT IT TO ROCKPORT.
CAN THEY JUST SEND CLIENTS BACK AND
FOURTH TO EACH OTHER LIKE THAT?
MAYBE IF THEY WOULD HAVE DONE MY
RETURN IN ARANSAS THEN I WOULD HAVE
GOTTEN MY RAL INSTEAD OF THE 2 WEEK
CHECK. THAT IS ALL I WANT TO SAY.

A.B.

Lisa [REDACTED] - SS# [REDACTED]
Jose [REDACTED] - SS# [REDACTED]
Sulia [REDACTED] - SS# [REDACTED]
Aurora [REDACTED] - SS# [REDACTED]
Pedro [REDACTED] - SS# [REDACTED]
Diana [REDACTED] - SS# [REDACTED]
Thomas [REDACTED] - [REDACTED]
Samuel [REDACTED] - [REDACTED]